IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6100 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G.S.R.T.

Versus

PARSHOTTAM MOHANLAL PATEL

Appearance:

MR HARDIK C RAWAL for Petitioner

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 12/01/2001

ORAL JUDGEMENT

1. The Gujarat State Road Transport Corporation (hereinafter referred to as 'the Corporation') has filed this petition challenging the award made by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 371 of 1985 dated 12/1/1987.

At the time of admission the Division Bench of this Court while issuing the notice granted ad-interim stay of the implementation of the award. It seems that

the workman was discharged, however, on behalf of the workman it was insisted that his son be taken in service in view of the award. But the Division Bench also granted interim relief against implementation of the award in so far as it relates to the appointment of son of the employee.

2. The short facts which are relevant for disposal of this petition are required to be considered. The respondent was working as a Conductor with the Corporation in Himatnagar Division. He worked for 25 years. The Civil Surgeon, Mehsana issued a certificate on 22/2/1984 to the effect that the respondent was unfit for the Conductor's post. It is surprising to note that though the petitioner was declared medically unfit, after two months another certificate was issued on 18/4/1984 by the Civil Surgeon Dr. B.T. Trivedi, to the effect that the respondent was unfit for the post of Conductor, but was fit for the post of a Peon. He was discharged on 18/4/1984. It was contended before the Tribunal that in view of the settlement if the workman is declared physically unfit, then in such case one member of his family should be recruited. In view of this the respondent submitted written application for giving appointment to his son. That application was not entertained by the Corporation.

3. On behalf of the Corporation it was made clear that the respondent was working as a Conductor and undisputedly he was discharged from service on 18/4/1984. It was further contended by the Corporation that by not offering job to the respondent's son, the Corporation has not violated any term of the settlement. The Corporation also clarified that when the certificate was obtained to the effect that the workman was unfit for the post of Conductor, but was fit for the post of Peon, there was no vacant post of Peon, therefore, question of considering the respondent-workman for giving him the work of Peon was out of question.

4. The Tribunal observed in the award that it has accepted the fact that in accordance with the settlement ifany workman is discharged, on the ground of disability, then in that case one member of his family is to be offered services according to his qualification by direct recruitment. The Tribunal has considered the alternative prayers made to the effect that the workman should be given the job of a Peon and should be paid full back wages or in the alternative his son should be employed in the Corporation. At the time of argument before the Tribunal it was made clear that the son of the respondent

should be given employment according to his qualification and till the time his son is given job, the Corporation should pay the wages to the workman. The Tribunal expressed an opinion that the respondent was discharged from service because of his physical unfitness. The Tribunal further observed that the Corporation ought to have given an appointment to one of his family member according to the settlement and he should have been continued in service as a Peon. The Tribunal was of the opinion that it is necessary that the concenred employee should be compensated for the economic loss which he has suffered considering the medical certificate. The Corporation did not issue the notice seeking explanation of the workman as to whether he was agreeable to accept the services or not ? Even the Corporation did not inquire from the workman that according to the settlement whether one of the family member of the workman is willing to work in the Corporation or not ? The Tribunal was of the view that it was the duty of the Corporation to inquire and give alternative employment. The Tribunal made an order directing to treat the workman to be continued in the services as a Peon and to pay wages and other perks within two months from the date of publication of the award. The Tribunal further directed that if the workman is unwilling to join the services, then in that case his son Kirit P. Patel, if he is qualified to render services, then he should be given an employment. Before the Tribunal it was pointed out that the workman had a minor son. It is against this award the present petition is filed.

5. The Corporation has placed on record vide Annexure-B a circular with regard to recategorisation. The circular is dated 25/2/1975 wherein it has been pointed out that despite the circular issued, the various Departments were forwarding the cases without verifying the claim. It goes without saying that even when certificates were issued without inquiring into the correctness and authencity of the certificates, applications were forwarded for recategorisation. It was also pointed out that on the ground of health or on the ground that the person is not fit to discharge the duties, request is being made to give different type of work on the basis of the certificates. It has been specifically pointed out that if the driver has weakness in the eye sight or eye sight is affected, then it becomes difficult for him to drive the vehicle though otherwise he is fit to do other work. Though there is no provision for recategorisation on humanitarin ground, the applications are considered if there is vacancy. However, it has been brought to the notice of the

authority that after giving work of a different nature, such person is submitting certificate to the effect that he is fit to discharge the duties which he was discharging earlier. It was pointed out in the circular that when an application is submitted for recategorisation, the opinion of the Civil Surgeon is required to be called for to find out that the workman is permanently disabled to discharge his duties in particular category or not and that he is likely to acquire the fitness to discharge the duties which were entrusted to him. Only after receipt of specific opinion the case should be forwarded so that there may not be any administrative problems. In the instant case despite the circular there was no verification of the medical certificate and without verifying the correctness of the certificate it was forwarded for taking decision.

6. The learned advocate for the petitioner has placed reliance on Circular No. 687/1980 - Annexure-B for making his submission that the workman being unable to discharge his duties, his son should be provided with job either Class-III employee or Class-IV employeee as per the qualification possessed by his son. It was pointed out on behalf of the Corporation that this circular will apply in the case of death of a workman while on duty or he has become permanently disable to discharge his duties, while on duty. The circular will be made applicable in such cases. In the instant case the workman respondent was discharged and, therefore, there was no question that while serving the Corporation the respondent workman expired. It is also not the case of respondent workman that he became permanently disable to discharge his duties while on duty, but on the contrary certificate disclosed that workman was in a position to work as a Peon. It is not mentioned in the certificate as to how the workman is not in a position to discharge his duties as a Conductor. There is no explanation by the learned advocate for the respondent as to how he became incapable to discharge his duties as a bus Conductor. The certificate is very vague. There is no evidence led by the respondent in this behalf and the Tribunal without considering the relevant aspects of the matter has given certain directions.

The learned counsel for the Corporation has relied upon the decision in the case of Director of Education (Secondary) v. Pushpendrakumar reported in (1998) 5 S.C.C. p. 192 the Apex Court has held as under:-

"The object underlying provision for grant of compassionate employment is to enable the family

> of deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment."

The Apex Court has further observed that the provision for grant of compassionate appointment is in the nature of exception to the general provision and does not and should not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them.

In para. 5 of the decision in the case of Lal Chand v. State of Haryana reported in (1999) 6 S.C.C. 760 the Apex Court has explained the word "Nakara", which is a Hindi word, as under :-

> "5. Blindness contemplates total disability.
> The word "nakara, which follows the word "blind" in the notification, has also to be understood in that sense. "Nakara" which is a HIndi word and has been shown in brackets has been used to explain the extent of disability of the employee concerned. It envisages that the employee on account of debility resulting from illness or other factors has become useless as a government servant and has completely and totally outlived his utility. The expression has been used to describe the extent of infirmity and disability as the word "nakara" means "of no use"."

It is clear from the above that the person must be disable to such an extent that he can be of no use. The Apex Court considered the medical certificate in para.6, and held that he has become "nakara", which does not advance his case. The certificate shows that he cannot do light duty. The certificate is wholly vague. The Court observed that in any case it does not categorised the appellant as "nakara" or of no use. If a person can pick up files in office or can fetch water for his colleagues, he cannot be treated as "Nakara". The disability should have been total and complete. In the instant case the certificate issued to the workman points

out that he was in a position to discharge his duties as a Peon. Thus, it is very clear that he cannot be treated as completely disable.

In the decision in the case of State of U.P. v. Paras Nath reported in (1998) 2 S.C.C. p.412 the Apex Court has held as under :-

> "The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment."

In the decision in the case of U.P. State Road Transport Corporation v. Pukhraj Singn & ors. reported in (1999) 1 S.C.C. p.190 the Apex Court has held as under :-

> "Once the Labour Court came to the conclusion that the action of the appellant in terminating the services of the first respondent was justified, legal and valid and he was not entitled to any benefit, we are unable to understand wherefrom the Labour Court drew the jurisdiction to require the appellant to engage the first respondent in a post other than as a driver."

The Apex Court has in para. 4 pointed out that the matter was adjourned to enable the counsel for the appellant to find out whether there was any Class-III or Class-IV post against which the first respondent could be accommodated and it was reported to the Court that there was no post. The Court pointed out that when the Labour Court came to the conclusion that the action of the appellant in terminating services of the first respondent was justified, legal and valid and was not entitled to any benefit, the Labour Court had no jurisdiction to require the appellant to engage the first respondent in a post other than as a driver.

In the decision in the case of Himachal Road Transport Corporation v. Dinesh Kumar reported in (1996) 4 S.C.C. p.560 the Apex Court has held as under :-

"In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post."

In view of the aforesaid decisions, it is very clear that in case of death in the circumstances pointed out in the aforesaid decisions, qualified person can be appointed under the kith and kin policy or if he has become permanently disabled while on duty, then as per the policy of the Corporation the person can be appointed and not otherwise. The Tribunal has ignored these aspects of the matter and has issued directions. It was also made clear to the Tribunal that there was no vacancy in so far as the post of Peon is concerned. Yet the Tribunal directed to appoint the respondent as a Peon. If the workman was not declared permanently disable while on duty there was no question of granting any other work or benefit.

In view of what is stated hereinabove, it is clear that the Tribunal has ignored the relevant circular and has directed the Corporation to give him the work of Peon. It is also required to be noted the Standing Order No. 361 of 1973 issued for absorbtion of son/daughter of an employee in case of retirement. It was pointed out that when the names are to be called for from the Employment Exchange for any vacancy, one member of the family of the retired employee of the Corporation will be permitted to apply directly to the Corporation subject to the condition that there is no other earning member in the family, that he/she possesses required qualification and his/her name registered in the Employment Exchange and is in the live register of the Employment Exchange. Such applicant may be given preference to the appointment

provided he/she is considered suitable and stands on par with other candidates on merits. Even in the case of an employee of the Corporation who has expired or has become permanently disable while on duty and when there is no any other earning member in the family, then one member of his/her family can directly apply for the suitable post in the S.T. Corporation, when the names are called for from the Employment Exchange, subject to the condition that his/her name is registered in the Employment Exchange and is in the live register in the Employment Exchange. Such applicant will be given preference and the appointing authority is competent to appoint him/her straight way in Class-III and Class-IV post subject to the conditions that the applicant possesses the required qualification, etc. for the post. Such cases will be placed for post facto approval before the selection Committee concerned. Thus, even in such a situation no post can be created. However, in case of vacancy, the abovereferred procedure is to be followed.

Thus, reading the circulars it is very clear that if the workman has expired or has become permanently disable while on duty and there is no any other earning member in the family, one member of the family of such person can make an application directly to the Corporation. The name is required to be considered with others, i.e. when the applications are called for from the Employment Exchange for the vacancies. In the instant case nothing is placed on the record and in view of this circular also the Tribunal ought to have rejected the claim of the workman.

The petition is allowed with no order as to costs. The impugned award is quashed and set aside. Rule is made absolute accordingly.

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* Pansala.